

G. Final Statement of Reasons

FINAL STATEMENT OF REASONS

Below is a summary of comments presented by the Broadband industry during the rule making public hearing held on May 22, 2008 at 1120 N Street, Room 1450, Sacramento, CA at 9:00 A.M. Also, see attached table of written comments received from the Broadband industry the Department of Transportation's responses.

Comment 1, Page 7 (53) lines 10-19 (Mr. Kieren – AT&T):

“One item I wanted to draw to your attention is the criteria of identifying broadband, which we’re going to use the FCC definition, but tying down the FCC definition in this document, the proposed regulations, the definition includes “from the user’s computer to the Internet.” All broadband services aren’t necessarily transported via the Internet, so it’s unnecessarily restrictive for other broadband applications.”

Department of Transportation Response:

The definition of “broadband” was changed to: “Broadband is a data transmission with speeds exceeding 200 kilobits per second (Kbps), or 200,000 bits per second, in at least one direction (downstream or upstream). Any revisions to this definition by the Federal Communications Commission shall change the definition used herein accordingly.”

Comment 2, Page 9 (55), Lines 5-13 and 17-22 (Mr. Candelaria – CCTA):

“Fundamentally our overarching concern is the necessity for uniformity when it comes to applications, costs and denial process from district to district.

Finally, I’d like to agree with Joseph’s point concerning the definition of “broadband.” I believe that the Department of Transportation added the phrase …

“...added the phrase “from the Internet to the user’s computer” as an illustration and not necessarily as part of the definition because, as Joe mentioned, the broadband includes far more than merely transportation from the computer to the Internet.”

Department of Transportation Response:

The Business, Transportation and Housing Agency has developed a standard application, entitled the “Broadband Facility Use and Installation Request Form” and all district offices and all State departments will utilize the new application. Conditions of permit denial have also been addressed in these regulations in section 1412.3 in order to streamline the process.

The fees for the placement of broadband facilities will be equivalent to the Encroachment Permit standard hourly rate times the number of hours for review of the “Broadband Facility Use and Installation Request Form” and inspection of the construction of the facility.

The definition was changed to: "Broadband- is a data transmission with speeds exceeding 200 kilobits per second (Kbps), or 200,000 bits per second, in at least one direction (downstream or upstream). Any revisions to this definition by the Federal Communications Commission shall change the definition used herein accordingly."

Comment 3, Page 10 (56) Lines 9-11 (Mr. Ormiston – Verizon):

"So our concerns mainly are on the relocation cost and how that's structured, so we will expound on that later."

The Department of Transportation's Response:

The Department shall not be responsible for any relocation costs. The permittee/applicant may recover costs from any source they see fit. The regulations will remain as is.

Comment 4, Page 10 (56), Lines 21-25 and Page 11 (57), Lines 1-17 (Mr. Kieren – AT&T):

"Because technology and broadband is now on everyone's radar screen and so the process of rights-of-way access has come up to be able to expedite deployment of infrastructure faster and, when the necessity arises, a process to be able to work through issues associated with it, not deterring from that, but wanting to back up a little bit to the original process as it is today, could use some minimal review and potential modifications to improve the existing process, the keywords are submitting – I can't find it here, but submitting a correct, completed application and then the 60-day process kicks in.

There's significant number of times that the initial information on the application form to provide that completed application is not always accepted, and so fair number of applications get denied looking for additional information, meaning that the original process in the place could use some additional improvements."

The Department of Transportation's Response:

The Streets and Highways Code (Section 671.5) requires that a completed application be submitted for the 60-day timeline to initiate. However, these regulations have specifically listed the reasons for denial, to promote uniformity. Also, district and headquarters staff are always available to assist the applicants in completing their "Broadband Facility Use and Installation Request Application."

Comment 5, Page 11 (57), Lines 21-24 (Mr. Candelaria – CCTA):

"CCTA shares those same concerns and addresses them and proposes modifications to attempt to address concerns over how to comply with the application process."

The Department of Transportation's Response:

The Streets and Highways Code (Section 671.5) requires that a completed application be submitted for the 60-day timeline to initiate. However, these regulations have specifically listed the reasons for denial, to promote uniformity. Also, district and headquarters staff are always available to assist the applicants in completing their “Broadband Facility Use and Installation Request Application.”

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Comment Number	Section	Comment	Comment Source	Comment Date	Response
1	Chapter 8	<p>NOTE: It would be helpful to point out that this chapter shall not usurp any existing authority that a public utility currently has to place its facilities within Caltrans ROW.</p>	Verizon	05/22/08 9/25/08	<p>The Department understands Verizon's concern, however, no usurpation is intended. If there is authority that allows a public utility to place facilities within Caltrans ROW, it shall supersede these regulations. Currently, the Streets and Highways Code allows the Department to determine the appropriate locations to permit encroachments. The regulations are intended to regulate and streamline the placement of broadband facilities in the State's ROW.</p>
2	1412.1	<p>Contrary to the definition of broadband provided by Public Utilities Commissioner Chong at the March 18th joint Caltrans and Public Utilities Commission (PUC) Meeting, Wiring California: Broadband in Caltrans Rights-of-Way, the definition proposed by Cal Trans below excludes some wireless services with slower transmission speeds.</p> <p>(a) "Broadband" is a data transmission with speeds exceeding 200 kilobits per second, in at least one direction; downstream (from the internet to the user's computer) or upstream (from the user's computer to the Internet).</p>	NextG	05/21/08	<p>The regulations apply to all facilities that fit the definition in the regulations. The regulations will be changed to, "Broadband" is a data transmission with speeds exceeding 200 kilobits per second</p>

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		Commissioner Chong defined broadband as including wireless services and made it clear that all wireless services should be included in the new broadband regulations. NextG Networks requests that the proposed broadband definition be modified to include all wireless services as envisioned for California by the PUC.	<u>(Kbps), or 200,000 bits per second, in at least one direction; (downstream (from the Internet to the user's computer) or upstream (from the user's computer to the Internet). Any revisions to this definition by the Federal Communications Commission shall change the definition used herein accordingly."</u>		(Kbps), or 200,000 bits per second, in at least one direction; (downstream (from the Internet to the user's computer) or upstream (from the user's computer to the Internet). Any revisions to this definition by the Federal Communications Commission shall change the definition used herein accordingly."
3	1412.1, 1412.2	The rules inconsistently use the word "broadband" to define their scope. For example, section §1412.2 speaks of permits "for broadband access", §1412.3 addresses permits "for broadband use", and § 1412.5 defines permits "for broadband installation." There should be a single, consistent definition. None of those phrases, however, are appropriate because, technically speaking, providers do not seek permits for "broadband access", for "broadband use", or for "broadband installation." Providers seek permits to place facilities - cables, fiber optics, cabinets, to name a few - over and through which an array of services will be provided, some of which may be "broadband" services. The better and more accurate approach is to frame the rules around permits to place facilities capable of providing broadband services.	AT&T	05/22/08	The regulations will reflect this change in Section 1412.2 to "Broadband facility installation" in place of "broadband access" and "broadband providers".
		The definition of broadband services, however, cannot be too narrow. As			The regulations apply

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		<p>drafted, the rules would apply only to data transmissions "downstream (from the Internet to the user's computer) or upstream (from the user's computer to the Internet)." Limiting the definition this way excludes facilities that carry many "broadband" applications and services that never touch the public Internet. For example, telemedicine services will use Internet Protocol and will be transmitted at 200 kbs or greater, but those services may not be streamed over the public Internet - to ensure reliability, they may be transmitted only on the private, closed network of the provider. Many other kinds of services, from distance learning applications to private management information services, likewise may never touch the Internet, yet they too are "broadband" services in the broadest sense. As the Broadband Taskforce Report goals indicate, the State intends to "ensure ubiquitous and affordable broadband infrastructure, made available through a variety of technologies to all Californians."¹ Governor Schwarzenegger's Executive Order is even more direct, stating "a technology-neutral approach to removing barriers to broadband deployment will encourage lower prices and creation of more consumer choices." Limiting the proposed rules to data that travels to and from the Internet <i>only</i> does not fully advance that goal.</p> <p>Finally, it is not clear whether the rules are intended only to apply to facilities dedicated to carrying broadband services or to multiple-service facilities as well. It should be the latter because, as a practical matter, most if not all of the facilities will not be dedicated solely to carrying just data packets to and from the Internet. A facility that serves business customers may carry plain old telephone service, private line intranet data services that never touch the Internet, as well as broadband Internet access. A residential facility, such as the simple copper loop, can carry plain old telephone service, broadband Internet access, and television programming. Of course, there is a nearly limitless combination of services that may ride a single facility, from residential to business services, from wholesale services to wireless services. If the purpose of the proposed rules is to compel providers, as a condition of access to Department rights-of-way, to dedicate facilities to broadband Internet</p>			<p>to all facilities that fit the definition in the regulations. The regulations will be changed to, "Broadband" is a data transmission with speeds exceeding 200 kilobits per second (Kbps), or 200,000 bits per second, in at least one direction; (downstream (from the Internet to the user's computer) or upstream (from the user's computer to the Internet). Any revisions to this definition by the Federal Communications Commission shall change the definition used herein accordingly."</p>

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		access, the rules fail their purpose because they would raise investment costs, dampening rather than promoting investment. Again, AT&T suggests that the proposed rules should be more broadly defined in relation to whether a facility is capable of providing "broadband" services.			
		(a) <i>"Broadband Facility" means a facility that is capable of a data transmission with speeds exceeding 200 kilobits per second (Kbps), or 200,000 bits per second, in at least one direction; downstream (from the internet to the user's computer) or upstream (from the user's computer to the Internet). Any revisions to this definition by the Federal Communications Commission shall change the definition used herein accordingly.</i>			
4	1412.1	(c) "Denial Letter" is a certified letter that is sent by the District Permit Office to a broadband applicant informing him/her that their request to encroach upon State-Right-of-Way is denied. This letter would state specifically the reasons for denial <u>with supporting statutory authority</u> (See Section 1412.5).	CCTA	05/21/08	Currently, statutes do not include any specific reasons for denial. These regulations include the list of reasons for denial in section 1412.3.
5	1412.1	(c) "Denial Letter" is a letter that is sent by the District Permit Office to a broadband applicant informing him/her that their request to encroach upon State-Right-of-Way is denied. The letter must state specifically the reasons for denial <u>with supporting statutory authority</u>.	CCTA	9/25/08	Currently, statutes do not include any specific reasons for denial. These regulations include the list of reasons for denial in section 1412.3.
6	1412.1	(d) "Dispute Letter" is a letter prepared and sent by the broadband applicant <i>via certified mail</i> to the District Director to set forth the grounds for challenging the denial or disputed conditions.	AT&T	12/19/08	The Department will accept letters via certified mail and/or e-mail to accommodate all applicants and to process requests

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7	1412.2	<p>The proposed rules state applications will receive "priority processing", but that phrase is not defined. Without defining what the Department means by "priority", there is no way to measure and evaluate whether the rules meaningfully promote broadband deployment. In fact, the rules elsewhere state the existing 60-day process applies to broadband facility applications, which seems to undermine the stated purpose to provide priority. See 1412.5. AT&T encourages the Department to adopt an objective standard, one that unquestionably evidences the Department's intent to provide priority, such as a 30-day interval to act.</p>	AT&T	05/22/08	<p>The Streets and Highways Code (Section 671.5) Allows the Department 60 days to process an Encroachment Permit Application. However, in the spirit of promoting broadband access, the Department has instituted a Departmental goal of processing permits for the placement of broadband facilities within 40 days.</p> <p>The regulations will be changed to, "All encroachment permits for broadband facility installation-access shall be issued by the Department of Transportation through</p> <p><i>All encroachment permits to place a Broadband Facility for broadband access shall be issued by the Department of Transportation through its District Offices pursuant to the internal management procedures set forth in the Encroachment Permits Manual. Encroachment Permit applications to place a Broadband Facility shall be granted or denied by the Department within 30 calendar days of receipt, from broadband providers shall receive priority processing:</i></p>

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		<p><u>its District Offices pursuant to the internal management procedures set forth in the Encroachment Permits Manual.</u></p> <p><u>Encroachment Permit applications from for broadband providers facility installation shall receive priority processing.”</u></p>			<p>its District Offices pursuant to the internal management procedures set forth in the Encroachment Permits Manual.</p> <p>Encroachment Permit applications from for broadband providers facility installation shall receive priority processing.”</p>
8	1412.2	<p>All encroachment permits for broadband access shall be issued by the Department of Transportation through its District Offices pursuant to the internal management procedures set forth in the Encroachment Permits Manual. <i>Encroachment permit applications and procedures will be standardized for all District Offices</i> Encroachment Permit applications from broadband providers shall receive priority processing of 40 days (<i>A 40 day timeline was proposed by CALTRANS at its March 18 meeting</i>).</p>	CCTA	05/21/08 9/25/08	<p>The Business, Transportation and Housing Agency has developed a standard application, entitled the “Broadband Facilities Installation and Use Request Application” and all district offices and all State Departments will utilize the new application. Conditions of Permit denial have also been addressed in these regulations in section 1412.3 in order to streamline the process.</p>

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					In addition, the Streets and Highways Code (Section 671.5) allows the Department 60 days to process an Encroachment Permit Application. However, in the spirit of promoting broadband access, the Department has instituted a Departmental goal of processing permits for the placement of broadband facilities within 40 days.
9	1412.2	All encroachment permits for broadband access shall be issued by the Department of Transportation through its District Offices pursuant to the internal management procedures set forth in the Encroachment Permits Manual. The use of Caltrans infrastructure, including streetlight poles or replacement poles, will be allowed for the installation of DAS "broadband" networks within Caltrans rights of way (both controlled access and conventional).	NextG	05/21/08	Broadband providers are to utilize their own facilities, as Caltrans cannot guarantee the use of its facilities for anything beyond what they were intended.
10	1412.3	4. the use does not have approval from a governmental body with jurisdiction, such as a local land use authority <u>for aerial facilities on scenic highways or Public Utilities Commission:</u>	Verizon	9/25/08	The regulations will be changed to, " <u>the use does not have approval from a governmental body with jurisdiction, such as a local land use authority or Public Utilities Commission,</u>

NOTE: Clarification is requested to ensure that the requirement is not interpreted to impose double or triple permitting requirements of each permit that is requested e.g. required city and county permits for Caltrans ROW within city limits or county permits for

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11	1412.3	<u>Caltrans ROW within unincorporated boundaries of a county.</u> NOTE: This condition could be interpreted to usurp Verizon's current authority to place facilities within the ROW if lane closures are required. Currently, Verizon can place facilities in Caltrans ROW if a lane closure is required as long as traffic control plans are included which are in accordance with the Caltrans Uniform Manual on Traffic Control.	Verizon	05/22/08 9/25/08	For item 6 (which was renumbered 7), lane closures for service access in access-controlled ROW are not allowed. However, they will be allowed on conventional highways. The regulations will be changed to, “the service access requires a lane closure on an <u>access controlled highway.</u> ”
		7. the service access points are not provided outside of the controlled access right of way; NOTE: This condition should be clarified as Caltrans ROW may extend beyond the controlled access portion of the ROW and Utility			For item 7 and 8 (which has been renumbered 8 and 9), this part of the regulations will remain as is. Facilities may be

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	providers should have access to all portions of Caltrans ROW whether inside or outside of the controlled access ROW.	<p>8. the service requires entry through a right-of-way fence.</p> <p>NOTE: This section should be clarified as Verizon has many facilities that require going through a Caltrans ROW fence.</p>			placed inside the State ROW, however, service access points are to be provided outside the controlled ROW fence to protect the integrity of the State Highway System.
12	1412.3	The proposed rules state that permit applications will be evaluated under the existing Encroachment Permits Manual. The proposed rules, however, state denial criteria that are not contained in the Manual. For example, whether the "service access requires lane closure", whether "service access points are not provided outside of the controlled access right of way" and whether "service requires entry through a right-of-way fence" are not denial grounds stated in the Manual. Establishing new denial criteria in the proposed rules creates a direct conflict with the Manual, which according to section 1412.2 of the proposed rules is supposed to govern broadband facility encroachment permits. The conflict should be avoided and the grounds for denial should be the same as articulated in the Manual.	AT&T	05/22/08	<p>The grounds for denial will remain as is. Defining them in these regulations will promote uniformity in processing applications among the districts.</p> <p><i>An encroachment permit to place a Broadband Facility for broadband use shall be denied when:</i></p> <ol style="list-style-type: none"> 1. <i>the Department lacks legal authority to issue an encroachment permit for the subject real property; or</i> 2. <i>the use adversely affects the safety, capacity, or integrity of the State highway rights-of-way.</i> <p><i>An encroachment permit to place a Broadband Facility for broadband use may be denied on the same grounds as contained in the Encroachment Permits Manual when:</i></p> <ol style="list-style-type: none"> 1. <i>the applicant has not complied with the provisions of prior encroachment permits;</i> 2. <i>the applicant is delinquent with payment on prior permits;</i>

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		<p>3. <i>the use does not have approval from a governmental body with jurisdiction, such as a local land use authority or Public Utilities Commission;</i></p> <p>4. <i>the environmental effects are significant and cannot be mitigated or mitigation is infeasible;</i></p> <p>5. <i>the installation and/or maintenance associated with the installation creates a safety</i></p> <p>6. <i>the service access requires a lane closure;</i></p> <p>7. <i>the service access points are not provided outside of the controlled access right-of-way;</i></p> <p>8. <i>the service requires entry through a right-of-way fence;</i></p>			
13	1412.3	An encroachment permit for broadband use facility <i>installation</i> shall be denied when:	AT&T	12/19/08	The regulations reflect the same title of the “Broadband Facilities Installation and Use Request Application” that the Business, Transportation and Housing agency developed.
14	1412.3	2. the applicant has not rectified an <i>undisputed</i> violation of a previous encroachment permit;	AT&T	12/19/08	Since the reasons for denial have been listed in section 1412.3, the regulations will remain as is, “ <u>the applicant has not rectified a violation of a previous encroachment permit.</u> ”
15	1412.3	7. <i>the service access requires a lane closure on an access-controlled highway;</i>	AT&T	12/19/08	Lane closures for service access in access-controlled ROW

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		are not allowed. However, it will be allowed on Conventional Highways. The regulations will reflect this change, as follows, “the service access requires a lane closure on an access on an <u>access controlled highway.</u> ”			Reasons 1, 2, 3 and 4 will be changed in the regulations as follows: 1. “the applicant has not complied with <u>the provisions of prior encroachment permits: (If a previous violation of an encroachment permit has been cured, that violation should not prevent a later application from being approved; denial letters must be limited to those situations where the applicant has failed to cure a previous permit violation).</u>
16	1412.3	2. the use adversely affects the safety, capacity, or integrity of the State highway rights-of-way -as specified by these regulations. (<i>It is our experience that the denial letters are issued for a variety of reasons, depending upon the district. CCTA proposes that the rules specify that the denial must be based on the regulations to ensure uniformity.</i>)	CCTA	05/21/08	Item 2 of section 1412.3 of these regulations will remain as is. The reasons for denial are listed in these regulations and these are the criteria that district offices will use to review the “Broadband Facilities Installation and Use Request Application.”

An encroachment permit for broadband use may be denied when:

1. the applicant has not complied with *and cured, the provisions of prior encroachment permits: (If a previous violation of an encroachment permit has been cured, that violation should not prevent a later application from being approved; denial letters must be limited to those situations where the applicant has failed to cure a previous permit violation).*

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		<p>2. the applicant is delinquent with payment on prior permits;</p> <p>3. the use does not have approval from a governmental body with jurisdiction, such as a local land use authority or Public Utilities Commission, if applicable (<i>if no such approval is necessary, denial letters can not be based on lack of approval</i>):</p> <p>4. the environmental effects are significant and cannot be mitigated or mitigation is infeasible;</p> <p>5. the installation and/or maintenance associated with the installation creates a safety hazard;</p> <p>6. the service access requires a lane closure and <i>the effects of the lane closure cannot be mitigated or properly managed</i>: (<i>The need for lane closures is quite common in broadband installations. Past practices have allowed installation where a lane closure is necessary if the lane closure can be properly managed, and the effects of the lane closure mitigated. As a result, the default provision of the regulations should be to approve permits where a lane closure is necessary, if the closure can be properly managed and the effects of the lane closure mitigated</i>).</p> <p>7. the service access points are not provided outside of the controlled access right of way;</p> <p>8. the service requires entry through a right-of-way fence.</p>			<p>prior encroachment permits;</p> <p>2. the applicant has not rectified a violation of a previous encroachment permit;</p> <p>3. the applicant is delinquent with payment on prior permits;</p> <p>4. <u>the use does not have approval from a governmental body with jurisdiction, such as a local land use authority or Public Utilities Commission, if applicable.</u></p> <p>For Item 6 (which has been renumbered 7), lane closures for service access in access-controlled ROW are not allowed. However, it will be allowed on Conventional Highways. The regulations will be changed to, “<u>the</u></p>

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17	1412.3	<p>While not openly addressed, the proposed regulations effectively prohibit the installation of distributed antenna system networks (DAS) in controlled access rights of way.</p> <p>DAS networks require the use of poles (utility, streetlight, camera, etc) for the installation antennas and repeater boxes (nodes). Bucket truck installation of nodes (between 10 PM and 5 AM) would typically be carried out off the roadway on the shoulder. If there is no shoulder, installation may require a lane closure.</p> <p>The proposed regulations state that an encroachment permit application may be denied when: 6) the service access requires a lane closure and 7) the service access points are not provided outside of the controlled access right of way.</p> <p>The above restrictions, along with Caltrans current position not to allow the installation of DAS antennas on Caltrans poles, creates a barrier to NextG Networks (and other DAS providers) efforts to improve wireless coverage and capacity in the State of California through DAS.</p> <p>NextG Networks of California, Inc. requests that Caltrans amend the proposed regulations as follows:</p> <p>6. the service requires a lane closure between the hours of 5 AM and 10 PM;</p> <p>7. service points are not provided outside of the controlled access right of way for installation of broadband facilities between 5 AM and 10 PM</p>	NextG	05/21/08	<p>For item 6 (which was renumbered 7), lane closures for service access in access-controlled ROW are not allowed. However, they will be allowed on conventional highways. The regulations will be changed to, “<u>the</u> service access requires a lane closure on <u>an</u> access controlled highway.”</p> <p>For item 7 (which was renumbered 8), this part of the regulations will remain as is. Facilities may be placed inside the State ROW; however, service access points are to be provided outside the controlled ROW fence to protect the integrity of the State Highway System.</p>

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18	1412.3	2. <u>the use adversely affects the safety, capacity, or integrity of the State highway rights-of-way as specified by these regulations.</u>	CCTA	9/25/08	The regulations will remain as is. The conditions of Denial are listed under the section 1412.3 titled "Conditions for Denial of Broadband Facilities Installation and Use Request Application."
19	1412.3	An encroachment permit for broadband use shall be denied when: 3. <u>the applicant has not complied with <i>and cured</i>, the provisions of prior encroachment permits;</u> 4. <u>the applicant has not rectified a violation of a previous encroachment permit;</u> 5. <u>the applicant is delinquent with payment on prior permits;</u> 6. <u>the use does not have approval from a governmental body with jurisdiction, such as a local land use authority or Public Utilities Commission, if applicable;</u>	CCTA	9/25/08	The regulations will be changed to reflect the addition of the words "if applicable" as follows: 4. <u>the use does not have approval from a governmental body with jurisdiction, such as a local land use authority or Public Utilities Commission, if applicable.</u>
20	1412.4	To avoid any confusion that a different methodology might apply, AT&T encourages the Department to state that "actual costs" will be determined as set forth in the Manual. (The title of this section is inaccurate since there is no "installation charge" but rather actual cost reimbursement). <i>Broadband providers Applicants seeking to place a Broadband Facility</i>	AT&T	05/22/08	The title of section 1412.4 of these regulations will be changed to, "Encroachment Permit Fees."

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		<i>installing broadband facilities within the State highway right-of-way shall be responsible for reimbursing the Department for the actual costs incurred by the State to issue an encroachment permit. Actual costs shall be determined according to the Encroachment Permits Manual</i>			
21	1412.4	Broadband providers installing broadband facilities within the State highway right-of-way shall be responsible for reimbursing the Department for the actual costs incurred by the State to issue an encroachment permit. <i>Actual costs will be reflected in a standardized fee for all districts and imposed uniformly. (The fee should be standardized so that applicants are aware of the costs for each application.)</i>	CCTA	05/21/08 9/25/08	Encroachment Permit fees are based on a standard hourly rate multiplied by the number of permit review and inspection hours. The regulations will remain as is.
22	1412.5	AT&T encourages the Department to act more quickly on broadband facility applications than the 60 days permitted by law. As indicated above, if the Department intends to give broadband deployment "priority" over other deployments, it must employ a standard that is objective, measurable, and meaningful, such as a shorter processing period like 30 days. Additionally, in AT&T's experience, several weeks can pass between receiving a verbal denial and receiving the written denial. Under the proposed rules, however, a provider cannot seek informal resolution, reconsideration or appeal upon a verbal denial - it must wait until it receives a written denial. AT&T encourages the Department to require a written denial be sent the same day as a verbal denial.	AT&T	05/22/08	The Streets and Highways Code (Section 671.5) allows the Department 60 days to process an Encroachment Permit Application. However, in the spirit of promoting broadband access, the Department has instituted a Departmental goal of processing permits for the placement of broadband facilities within 40 days. <i>Within 60 30 calendar days of receiving a completed encroachment permit application package to place a Broadband Facility for broadband installation, the Department must either approve or deny the application. Upon denial of an application, a "Denial Letter" shall be sent via electronic mail to the applicant clearly specifying the reasons for denial. If denial is made to the applicant verbally, the Department shall send the "Denial Letter" on the same day as the verbal denial. The letter shall</i>

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23		<i>include the statutory or regulatory authority relied upon for denial that conflicts with the applicant's proposed plan.</i>			electronic mail including regulatory authority for denial.
23	1412.5	Within 40 days of receiving a completed encroachment permit application package for broadband installation, the Department must either approve or deny the application. Upon denial of an application, a “Denial Letter” shall be sent via electronic and/or certified mail to the applicant clearly specifying the reasons for denial. The letter shall include the statutory or regulatory authority relied upon for denial that conflicts with the applicant’s proposed plan. If a denial letter is not issued, the project shall be deemed approved.	CCTA	5/21/08 9/25/08	The Streets and Highways Code (Section 671.5) allows the Department 60 days to process an Encroachment Permit Application. However, in the spirit of promoting broadband access, the Department has instituted a Departmental goal of processing permits for the placement of broadband facilities within 40 days.
24	1412.6	AT&T supports the concept of informal resolution, something that is not part of the Manual today. The proposed rule, however, should be revised in two respects: to ensure a meeting is held if requested and to clarify the timeline. As drafted, the District Office is not obligated to grant a request for a meeting. If the informal dispute resolution process is to have any chance of success, the parties must meet, something that is not certain to happen under the rules as proposed. Second, the rules are not clear	AT&T	05/22/08	The Department will accept the “Dispute Resolution Package” submittal via electronic or certified mail in section 1412.7. However, it is up to the

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		<p>concerning when an applicant may submit a "Dispute Resolution Package" (i.e. file a formal appeal) - within 10 business days of receiving a denial letter, within 10 business days of requesting an informal meeting with the District Permit Office, or within 10 business days of holding that meeting? Again, to make the informal dispute resolution process meaningful, the parties must meet and, therefore, AT&T suggests applicants should have 5 business days after the meeting is held to file an appeal.</p> <p><i>Upon receiving the "Denial Letter", the Applicant has the option to request an informal meeting with the District Permit Office. The District Permit Office shall offer a meeting on a date that is within 10 business days of the request. If within 10 business days no resolution is achieved at the meeting, the applicant may submit via electronic mail a "Dispute Resolution Package" to the District Director within another 5 business days of the meeting.</i></p> <p><i>If the Applicant chooses to forgo the informal meeting with the District Permit Office, but wishes to challenge the denial, the Applicant may seek reconsideration or may file an appeal as otherwise provided in these rules must submit a "Dispute Resolution Package" to the District Director within 15 business days of receiving the "Denial Letter."</i></p>			<p>applicant to try to seek resolution with the District Permit Office within 10 days. The regulations will be changed as follows, "Upon receiving the "Denial Letter," the applicant has the option to request an informal meeting with the District Permit Office. If within 10 business days of the request, if no resolution is achieved, the applicant may submit a "Dispute Resolution Package" to the District Director within another 5 business days." The regulations will be changed as follows, "Upon receiving the "Denial Letter," the applicant has the option to request an informal meeting with the District Permit Office.</p>
25	1412.6	Upon receiving the "Denial Letter", the Applicant has the option to request an informal meeting with the District Permit Office. If within 10 business days from the first informal meeting, no resolution is achieved, the applicant may submit a "Dispute Resolution Package" to the District Director within another 5 business days.	CCTA	05/21/08	

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		If within The District Permit Office shall in turn meet with the applicant within 10 business days of the applicant's request. If no resolution is achieved, the applicant may submit a "Dispute Resolution Package" to the District Director within another 5 business days."			
26	1412.6	<p>Upon receiving the "Denial Letter", the Applicant has the option to request an informal meeting with the District Permit Office. If within The District Permit Office shall in turn meet with the applicant within 10 business days of the applicant's request. ; If no resolution is achieved, the applicant may submit a "Dispute Resolution Package" via electronic or certified mail to the District Director within another 5 business days. <i>The Director shall meet with the applicant within 10 business days of the date of the "Dispute Resolution Package"</i></p> <p>If the Applicant chooses to forgo the informal meeting with the District Permit Office, but wishes to challenge the denial, the Applicant must submit a "Dispute Resolution Package" to the District Director within 15 business days of receiving the "Denial Letter."</p>	AT&T	12/19/08	<p>The Department will accept all Dispute Resolution Packages (DRP) in electronic and certified mail.</p> <p>However, unless a formal appeal to the Department Director is invoked, the meetings will be with the District Permit Office and the District Director. The Director is understood to be the Department Director.</p> <p>Finally, the option of foregoing the informal meeting with the District Permit Office,</p>

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27	1412.7	<p><i>The applicant may request reconsideration of the denial of an encroachment permit application to place a Broadband Facility broadband facility installation or the grant of a permit with conditions that the applicant challenges, by sending a "Dispute Letter" via certified electronic mail to the District Director setting forth the grounds for challenging the denial or disputed conditions within 15 business days of the date the "Denial Letter" was mailed.</i></p> <p><i>The District Director or delegate shall send a written response via electronic mail to the applicant within 15 business days of receiving the "Dispute Letter." In the response, the District Director or delegate shall:</i></p> <ol style="list-style-type: none"> 1. <i>grant the permit; or</i> 2. <i>clearly state the availability, if any, of alternative routes known by the Department or mitigation measures that would result in a grant of the permit; or</i> 3. <i>deny the permit and advise the applicant of the opportunity to engage in a formal appeal process.</i> <p><i>If the District Director denies the request, the applicant shall respond via electronic mail within 15 business days of receipt of the District Director's denial to request an appeal to the Department Director.</i></p>	AT&T	05/22/08	<p>is at the desire of the applicant and the applicant is welcome to continue with the reconsideration process with the District Director. The informal meeting was placed as an option.</p> <p>The "Dispute Letter" must be submitted via certified mail; however, the applicant may also submit a copy via electronic mail. The regulations will be changed as follows, "The applicant may request reconsideration of the denial of an encroachment permit application for broadband facility installation or the grant of a permit with conditions that the applicant challenges, by sending a "Dispute Letter" via certified and/or electronic and/or certified mail to the District Director setting forth the grounds for</p>

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		The definition of “Dispute Letter” will continue to have the following definition, “Dispute Letter” is a letter prepared and sent by the broadband applicant via certified mail to the District Director to set forth the grounds for challenging the denial or disputed conditions.”			
28	1412.7	3. deny the permit, based on, and cited with, reference to statutory requirements and advise the applicant of the opportunity to engage in a formal appeal process.	CCTA	05/21/08 9/25/08	Denial will be based on regulatory authority as set in section 1412.3 of these regulations.
29	1412.7	The applicant may request reconsideration of the denial of an encroachment permit application for broadband facility installation or the grant of a permit with conditions that the applicant challenges, by sending a “Dispute Letter” via certified-and/or electronic and or certified mail to the District Director setting forth the grounds for challenging the denial or disputed conditions within 15 business days of the date the “Denial Letter” was mailed, or the date of the informal meeting with the District Permit	AT&T	12/19/08	The “Dispute Letter” must be submitted via certified mail; however, the applicant may also submit a copy via electronic mail. The regulations will be

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		<p><i>Office or District Director under Section 1412.6, whichever is later.</i></p> <p>The District Director or delegate shall send a written response to the applicant <u>via electronic or certified mail</u> within 15 business days of receiving the “Dispute Letter.” In the response, the District Director or delegate shall:</p> <p><u>encroachment permit application for broadband facility installation or the grant of a permit with conditions that the applicant challenges,</u></p> <p><u>by sending a “Dispute Letter” via certified and/or electronic and/or certified mail to the District Director setting forth the grounds for challenging the denial or disputed conditions within 15 business days of the date the “Denial Letter” was mailed.”</u></p>			<p>changed as follows, “The applicant may request reconsideration of the denial of an encroachment permit application for broadband facility installation or the grant of a permit with conditions that the applicant challenges,</p> <p>by sending a “Dispute Letter” via certified and/or electronic and/or certified mail to the District Director setting forth the grounds for challenging the denial or disputed conditions within 15 business days of the date the “Denial Letter” was mailed.”</p> <p>The definition of “Dispute Letter” will continue to have the following definition, “Dispute Letter” is a letter prepared and sent by the broadband applicant via certified mail to the District Director to set forth the grounds for challenging</p>

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30	1412.8	<i>If the applicant elects to engage in the formal appeal process, the applicant shall submit a "Dispute Resolution Package", including all documentation substantiating the appeal, to the Department Director via certified electronic mail.</i>	AT&T	05/22/08	These regulations will be changed to, "If the applicant elects to engage in the formal appeal process, the applicant shall submit a "Dispute Resolution Package," including all documentation substantiating the appeal, to the Department Director via certified mail <u>and/or</u> electronic and/or certified mail."
31	1412.8	The process for appeal appears to be the same as contained in the Manual except in one significant respect: the timeline for applicants to act has been reduced by 75%. Under the Manual, an applicant has 60 days to file an appeal and the Department has 60 days to act on it. Under the proposed rules, an applicant has only 15 days to file an appeal but the Department still has 60 days to act on it. AT&T supports shorter timelines, but those shorter timelines should apply to the Department as well. As a practical matter, providers likely aren't waiting until the 60th day to file an appeal - a provider that wants to install facilities has every incentive to act quickly so it can provide service to its customers. Requiring the Department to act sooner, on the same shortened timeline that it asks of providers, is fair and unquestionably will expedite the process.	AT&T	05/22/08	The Streets and Highways Code (Section 671.5) allows the Department 60 days to process an Encroachment Permit Application. However, in the spirit of promoting broadband access, the Department has instituted a Departmental goal of processing permits for the placement of broadband facilities

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					within 40 days. However, the regulations shorten the dispute resolution process in order to facilitate the placement of broadband facilities in the State's ROW.
32	1412.9	<i>To the extent required by law. Applicants shall be solely responsible for the costs of relocating their broadband facilities to facilitate any highway improvement projects. This rule does not apply to any Department freeway projects and is not intended to amend or supersede any separate agreement the Department may have with an applicant governing relocation costs.</i>	AT&T	05/22/08	These regulations will not supersede any separate previous agreement that the Department may have with the applicant governing relocation costs. These regulations apply from the date they are published with the Office of Administrative Law forward.
33	1412.9	AT&T has a master agreement with the Department that, among other things, allocates relocation costs on Department "Freeway Projects." Although the Department distinguishes between "freeways" and "highways", AT&T believes it is important nonetheless that the proposed rules be clarified to indicate they are not intended to supersede the master agreement and that relocation costs will be born by the applicant only if otherwise required by law.	AT&T	05/22/08	These regulations will not supersede any separate previous agreement that the Department may have with the applicant governing relocation costs. These regulations apply from the date they are

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34	1412.9	<p>Applicants shall be solely responsible for the costs of relocating their broadband facilities to facilitate any highway improvement projects, <i>unless the facility owner has prior rights to occupy the Right of Way, or if the Department requires an additional relocation due to prior error.</i> Notwithstanding this requirement, applicant may obtain funds from sources external to the applicant, including but not limited to construction in aid funds, undergrounding funds, or grants issued to fund broadband deployment. (This language reflects current practice of the Department assuming costs for relocation where error on the part of the Department has required relocation, or where the facility owner has obtained a right to be in the Right of Way).</p>	CCTA	05/21/08 9/25/08	<p>These regulations will not supersede any separate previous agreement that the Department may have with the applicant governing relocation costs. These regulations apply from the date they are published with the Office of Administrative Law forward.</p>
35	1412.9	<p>Applicants shall be solely responsible for the costs of relocating their broadband facilities to facilitate any highway improvement projects.</p> <p>NOTE: The term "highway improvement project" should be clarified to only apply to road widening or straightening that is funded by Caltrans, the state or the federal government, or other valid government entity. It should not include improvement projects necessitated by developers or done for beautification/aesthetic purposes. If Verizon or other utilities were required to pay for improvement projects necessitated by developers, such a result would violate the accepted rule set forth in Pacific Gas and Electric Company v. Dame Construction Company, 191 Cal. App. 3d 233, 236 Cal. Rptr. 351 (1st Dist. 1987). Furthermore, any rule should not preclude Verizon from recovering costs which are recoverable under</p>	Verizon	05/22/08	<p>The Department does not wish to be responsible for any relocation costs associated with new broadband facilities placed in the State's ROW. Therefore, the applicant shall be responsible for the relocation cost and may recover such costs from any party he/she sees appropriate.</p>

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	state or federal law, regulations or tariffs.	In addition, relocations for which a utility may be charged should be limited to relocations in a like manner (i.e., aerial to aerial and underground to underground). To hold utilities solely responsible for aerial to underground relocations would contravene the forced undergrounding rules that are currently in effect in for utilities under tariffs approved by the CA Public Utilities Commission. Adding the clause "except as otherwise provided by tariff or rule" at the beginning or end of this section would accomplish this result.			
36	1412.9	<p><u>Except as required by federal and state law, Caltrans shall not be responsible for any costs of relocating an Applicants broadband facilities to facilitate any highway improvement projects that are not solely for aesthetic purposes.</u></p> <p>This change is requested to ensure that broadband and communication providers are not responsible for relocation costs necessitated by developments. Caltrans road improvement requirements that are placed on developers or for relocations necessitated for aesthetic purposes. As drafted it provides leverage for the developer to not pay such costs and usurps our tariff requirements and the decision in Pacific Gas and Electric v Dame Construction. Furthermore, any rule should not preclude Verizon from recovering costs which are recoverable under state or federal law, regulations or tariffs, including reimbursement available for federal funding.</p> <p>In addition, relocations for which a utility may be charges should be limited to relocations in a like manner (i.e. aerial to aerial and underground to underground). To hold utilities solely responsible for aerial to underground relocations would contravene the forced undergrounding rules that are currently in effect for utilities under tariffs approved by the CA Public Utilities Commission.</p>	Verizon	9/25/08	These regulations will not supersede any separate previous agreement that the Department may have with the applicant governing relocation costs. These regulations apply from the date they are published with the Office of Administrative Law forward.

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37	1412.9	<p>Verizon requests revision of this section to eliminate requirements for applicants to be responsible for relocation costs necessitated for highway improvement that are imposed on developer's as a condition of a development permit. In addition, Verizon requests that the section be revised to exclude providers that have Master Relocation Contracts with Caltrans or relocations as outlined in the California Street and Highway Code Sections 700 thru 711. These changes are essential to ensure that this requirement does not usurp Verizon's tariff, state law, impair existing contracts between Verizon and Caltrans and is consistent with the determination as made in Pacific Gas and Electric v Dame Construction Company, Inc. (191 Cal. App. 3d 233) "For the foregoing reasons, we hold that where a private party, on its own initiative and not that of government, develops a parcel of land and thereby creates or aggravates a need for a public improvement which requires the relocation of existing utility equipment, the private party shall bear the necessary relocation costs."</p>	Verizon	12/19/08	The Department understands that developer projects may require relocation of broadband facilities, which will come at a cost. Broadband providers may request reimbursement from the party/source he/she sees appropriate.
38	General	<p>In several of its redlines, AT&T suggests changing regular mail notification to electronic mail notification. This simple change can further expedite the permit process by avoiding the day or two delivery lag inherent with the postal system.</p>	AT&T	05/22/08	The Department will accommodate electronic mail submittals, however certified mail is required.

Finally, AT&T would like to take the opportunity to address the related "Broadband Facilities Installation and Use Request Application", which it only recently learned of. There are several fields on the application that do not appear on the Department's Standard Encroachment Permit Application, such as: Assessor's Parcel Number; Land Section; Township; Range; and Meridian. AT&T does not understand why this information is being required now, when it was never required before. In some instances,

The Business, Transportation and Housing Agency has developed a standard application, entitled the "Broadband Facilities Installation and Use

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		<p>in particular on a lengthy encroachment, there could be multiple parcel numbers that will require research, delaying rather than expediting application submission. Also, the lengthy instructions seem to create policy and extend beyond the Manual. Finally, it appears a provider's contractor is required to seek a permit too -something that has not been required in the past - which means one job will be permitted twice.</p> <p>Again, AT&T appreciates the Department's efforts to promote broadband deployment in California. We hope our comments help the Department fashion rules that support what we are all trying to achieve - efficient and timely deployment of broadband infrastructure.</p>			<p>Request Application" and all district offices and all State Departments will utilize the new application. Other Departments have requested those additional fields to ease their review through their business process. Only the sections required by Caltrans should be filled out. The appropriate State Department will clarify if a parcel number is necessary. It is not necessary for Caltrans' purposes.</p>